

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Rico Isaih Hairston,	:	
	:	Case No. 1:22-cv-104
Plaintiff,	:	
	:	Judge Susan J. Dlott
v.	:	
	:	Order Adopting Reports and
Frelon Sparks, <i>et al.</i> ,	:	Recommendations
	:	
Defendants.	:	

This matter is before the Court on the Report and Recommendations entered by Magistrate Judge Peter B. Silvain, Jr. on August 24, 2023. (Docs. 127, 128.) In the first Report and Recommendation, the Magistrate Judge recommended that (1) Plaintiff’s “Motion for Leave[~~/~~]Amended Complaint” (Doc. 93) be granted in part, as to Defendants Bureau of Classification and Reception (“BOCR”) and BOCR Director K. Hupka, and denied in part, as to Defendant Warden Ron Erdos; and (2) Plaintiff’s Motion for Leave to File Supplemental Complaint (Doc. 103) be denied. (Doc. 127 at PageID 1123.) In the Second Report and Recommendation, the Magistrate Judge recommended that Plaintiff’s Motion for Leave for Emergency Preliminary Injunction (Doc. 96) be denied. (Doc. 128 at PageID 1108.) For the reasons that follow, the Court will **ADOPT** the Reports and Recommendations.

I. STANDARD OF LAW AND ANALYSIS

Title 28 U.S.C § 636(b)(1)(B) and Federal Rule of Civil Procedure Rule 72(b)(1) authorize magistrate judges to make recommendations concerning dispositive motions and prisoner petitions challenging conditions of confinement. Parties then have fourteen days to make file and serve specific written objections to the report and recommendation. 28 U.S.C. 636(b)(1); Fed. R. Civ. P. 72(b)(2). If a party files objections to a report and recommendation, a

district judge must review it under the *de novo* standard. *Baker v. Peterson*, 67 F. App'x 308, 310 (6th Cir. 2003). When no objections are filed, “[t]here is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review [the] magistrate’s report.” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also Weir v. Centurion*, No. 3:19-CV-00131, 2021 WL 5165930, at *1 (M.D. Tenn. Nov. 5, 2021) (“The district court is not required to review, under a *de novo* or any other standard, those aspects of the report and recommendation to which no objection is made.”). Nonetheless, some district courts follow the Advisory Committee Notes to Rule 72(b) and review the report and recommendation for clear error. *See e.g., Roane v. Warden of Corr. Reception Ctr.*, No. 2:22-CV-2768, 2022 WL 16535903, at *1 (S.D. Ohio Oct. 28, 2022); *Lassiter v. Dullaghan*, No. 1:10-CV-010, 2011 WL 110259, at *1 (S.D. Ohio Jan. 13, 2011). “The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1) (substantially similar).

Neither party filed objections to either Report and Recommendation despite the Magistrate Judge providing them with specific Notices of their right to timely object. The Court has reviewed the pending motions. The Court agrees with the well-reasoned Reports and Recommendations.

II. CONCLUSION

The Reports and Recommendations (Docs. 127, 128) are **ADOPTED**, and the pending motions are resolved as follows:

(1) Plaintiff’s “Motion for Leave[~~/~~]Amended Complaint” (Doc. 93) is

GRANTED IN PART, as to Defendants BOCR and Director Hupka, and

DENIED IN PART, as to Defendant Warden Erdos;

(2) Plaintiff's Motion for Leave to File Supplemental Complaint (Doc. 103) is

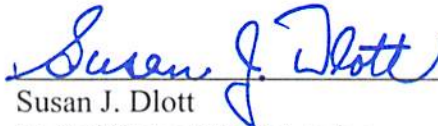
DENIED; and

(3) Plaintiff's Motion for Leave for Emergency Preliminary Injunction (Doc. 96)

is **DENIED**.

IT IS SO ORDERED.

BY THE COURT:



Susan J. Dlott
United States District Judge